

**UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

IN RE: NATIONAL FOOTBALL
LEAGUE PLAYERS' CONCUSSION
INJURY LITIGATION

Kevin Turner and Shawn Wooden,
*on behalf of themselves and
others similarly situated,*

Plaintiffs,

v.

National Football League and
NFL Properties LLC,
successor-in-interest to
NFL Properties, Inc.,

Defendants.

THIS DOCUMENT RELATES TO:
ALL ACTIONS

No. 2:12-md-02323-AB

MDL No. 2323

Hon. Anita B. Brody

Civ. Action No. 14-00029-AB

**OPPOSITION OF CO-LEAD CLASS COUNSEL TO X1LAW'S MOTION
REQUESTING THAT THE COURT RECONSIDER ITS ORDER [ECF NO. 10370]**

Co-Lead Class Counsel submits this response to X1Law's Motion Requesting that the Court Reconsider its Order (ECF No. 10400).

Incredibly, Patrick Tighe of X1Law challenges and seeks to unwind the Court's recent Order, spurred by the NFL's "Generally Consistent" appeal. The Court's Order—from any reasonable vantage—rejects the NFL's relentless arguments that diagnoses rendered outside the BAP must satisfy the identical criteria employed for diagnoses rendered in the BAP, and is a clear victory for players seeking to hold the NFL to the deal it negotiated. As the Court is aware, in its

recent appeal, the NFL sought to require that diagnoses made through the MAF strictly adhere to the diagnostic evaluation and criteria of the BAP. As the Order notes, the NFL withdrew its motion, making clear that MAF diagnoses need only be “generally consistent” with the BAP criteria, and required only that the Settlement rules be clarified to provide that Qualified MAF Physicians explain why a diagnosis made based on evaluation and criteria different from those set forth for the BAP are “generally consistent” with such criteria.

Notably, none of Mr. Tighe’s clients were involved in the NFL’s “Generally Consistent” appeal to the Court. More generally, however, Tighe’s Motion for Reconsideration is replete with errors. For example, Mr. Tighe argues that the issue before the Court was only the application of the “generally consistent” standard to diagnoses made by Qualified MAF Physicians who are also approved BAP Providers. *See* ECF No. 10400, p. 2. However, the issue raised by the NFL, like the “generally consistent” standard itself, applies to *all* diagnoses made outside of the BAP, including diagnoses by Qualified MAF Physicians who are not also BAP Providers. Similarly, contrary to Mr. Tighe’s argument, the Court made no finding about the relevance or necessity of particular aspects of the BAP, such as corroborating affidavits, to diagnoses made outside of the BAP. *See Id.* In short, there were no changes made by the Court to the “generally consistent” standard. *See id.*, pp. 3-4. Importantly, the Order affirms that the diagnosing physician is in the best position to assess whether his or her diagnosis is “generally consistent” with the BAP criteria in the first instance.

Though lacking in legal or factual foundation, Tighe’s motion more generally puzzles with the question to which it cannot provide a genuine answer—*i.e.*, why would anyone representing players seek to displace an Order that embodies the rejection of serial NFL arguments and appeals to non-BAP diagnoses? While Tighe’s lack of experience and knowledge of the Settlement

Agreement may underlie his failure to appreciate both the benefits that the NFL's withdrawal delivered to the Retired NFL Football Players and the significance of the Order he seeks to be reconsidered, something more appears to be at work.

Indeed, throughout the implementation of the Settlement, Mr. Tighe has actively sought all flavors of the media spotlight, and has been an active collaborator with various internet sites and "media" sources in spreading conspiracy theories and falsehoods about the Settlement. In particular, Mr. Tighe appears to be a go-to source for Roger Stone and Sheila Dingus. Ms. Dingus's blog, *Advocacy for Fairness in Sports*,¹ has offered unfounded speculations and muckraking about the state and integrity of the Settlement since February 8, 2017. Recently, Dingus posted a story about the Order now challenged by Mr. Tighe, comparing it to the Trojan Horse that brought down Troy.² Roger Stone, the self-described "dirty trickster"³ and a focus of the on-going "Russia" investigation by Robert Mueller⁴ (Mueller recently indicted Stone for lying

¹ See <http://advocacyforfairnessinsports.org> (last visited Feb. 3, 2019).

² See <http://advocacyforfairnessinsports.org/nfl-concussion-settlement/the-nfls-appeal-withdrawal-resembles-a-trojan-horse> (last visited Feb. 3, 2019); see also <http://advocacyforfairnessinsports.org/nfl-concussion-settlement/why-the-nfls-concussion-settlement-appeal-withdrawal-isnt-good-news> (last visited Feb. 3, 2019)

³ See <https://www.nytimes.com/2017/03/21/us/roger-stone-donald-trump-russia.html> (last visited Feb. 3, 2019).

⁴ See <https://abcnews.go.com/Politics/robert-mueller-appears-laser-focused-roger-stone-emails/story?id=59485571> (last visited Feb. 3, 2019).

and obstructing justice⁵), has been peddling conspiracy theories and trash-talk about the Settlement since January 2018.⁶

Mr. Tighe is not merely an informant to such “news” sources. Rather, Mr. Tighe has appeared as a guest of Mr. Stone on *Infowars*, the internet media domain founded by Alex Jones.⁷ On the February 13, 2018 broadcast of *Infowars*, Mr. Tighe spoke (as a representative of *Advocacy for Fairness in Sports*) to Mr. Stone at length about the NFL’s orchestration of a dysfunctional Settlement program that was not paying claims and the NFL’s use of the “Anthem kneeling” scandal to cover this up.⁸ Moreover, since the Order challenged by Mr. Tighe was entered, on January 17, 2019, Mr. Stone has echoed the position asserted by Mr. Tighe – the Order is a loss for the players and rewrites the Settlement Agreement.⁹

⁵ See <https://www.nytimes.com/2019/01/25/us/politics/roger-stone-trump-indictment-arrest.html> (last visited Feb. 3, 2019)

⁶ See <https://stonecoldtruth.com/nfl-corruption-redux/> (last visited Feb. 3, 2019); see also <https://dailycaller.com/2018/09/04/real-nfl-scandal/> (last visited Feb. 3, 2019) and <https://dailycaller.com/2019/01/17/stone-nfl-injuries/> (last visited Feb. 3, 2019).

⁷ Alex Jones’ claims to fame include calling the Sandy Hook shooting a hoax, suggesting that 9/11 was an “inside job”, and propagating the phony “Pizzagate” scandal about Hillary Clinton being involved in child trafficking.

⁸ See <https://podfanatic.com/podcast/warroom/episode/war-room-2018-feb-13-tuesday-senate-democrats-embarrass-themselves-on-russian-collusion-delusion> (Mr. Tighe appears at 33 minutes and 31seconds) (last visited Feb. 3, 2019). Mr. Tighe reprised his speculations again on Tucker Carlson’s Fox News Show, where he mentioned that most of his claims were in audit, but added that the Settlement discriminated against African Americans. See <https://insider.foxnews.com/2018/11/24/attorney-injured-nfl-players-league-wants-look-good-not-be-good> (last visited Feb. 3, 2019).

⁹ See <https://www.thegatewaypundit.com/2019/01/roger-stone-the-nfl-scandal-the-president-should-be-tweeting-about/> (last visited Feb. 3, 2019); see also <https://www.infowars.com/watch/?video=5c425fbbfc59e33104db3e72> (last visited Feb. 3, 2019).

Given Mr. Tighe's efforts to help sow the "media" with misinformation and baseless conspiracy contentions, one cannot help but question whether Mr. Tighe is seeking to distract from his own work as a lawyer in this Settlement and deflect from the situation he has created for many players. While 774 MAF claims have been approved to date, for payable Monetary Awards in excess of \$617 million,¹⁰ most of Mr. Tighe's claims, by his own acknowledgment, are the subject of a pending audit.

While the report from the audit may shed light on what really underlies Mr. Tighe's motion, Co-Lead Class Counsel remains hopeful that no Retired NFL Football Player represented by Mr. Tighe with a valid claim has been compromised by Mr. Tighe's actions, and will work to ensure that all receive the full benefits provided for them under the negotiated Settlement.

For all of the foregoing reasons, Co-Lead Class Counsel requests that X1Law's Motion Requesting that the Court Reconsider its Order be denied.

Date: February 5, 2019

Respectfully submitted,

/s/ Christopher A. Seeger
Christopher A. Seeger
SEEGER WEISS LLP
55 Challenger Road, 6th Floor
Ridgefield Park, NJ 07660
cseeger@seegerweiss.com
Telephone: (212) 584-0700

CO-LEAD CLASS COUNSEL

¹⁰ See www.nflconcussionsettlement.com (last visited Feb. 4, 2019).

CERTIFICATE OF SERVICE

I, Christopher A. Seeger, hereby certify that a true and correct copy of the foregoing was served electronically via the Court's electronic filing system on the date below upon all counsel of record in this matter.

Dated: February 5, 2019

Respectfully submitted,

/s/ Christopher A. Seeger
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